

AGRICULTURAL GUESTWORKERS: MEETING THE GROWING NEEDS OF AMERICAN AGRICULTURE

HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION

JULY 19, 2017

Serial No. 115–40

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

31–629

WASHINGTON : 2018

COMMITTEE ON THE JUDICIARY

BOB GOODLATTE, Virginia, *Chairman*

F. JAMES SENSENBRENNER, Jr., Wisconsin	JOHN CONYERS, JR., Michigan
LAMAR SMITH, Texas	JERROLD NADLER, New York
STEVE CHABOT, Ohio	ZOE LOFGREN, California
DARRELL E. ISSA, California	SHEILA JACKSON LEE, Texas
STEVE KING, Iowa	STEVE COHEN, Tennessee
TRENT FRANKS, Arizona	HENRY C. "HANK" JOHNSON, JR., Georgia
LOUIE GOHMERT, Texas	THEODORE E. DEUTCH, Florida
JIM JORDAN, Ohio	LUIS V. GUTIERREZ, Illinois
TED POE, Texas	KAREN BASS, California
JASON CHAFFETZ, Utah	CEDRIC L. RICHMOND, Louisiana
TOM MARINO, Pennsylvania	HAKEEM S. JEFFRIES, New York
TREY GOWDY, South Carolina	DAVID CICILLINE, Rhode Island
RAÚL LABRADOR, Idaho	ERIC SWALWELL, California
BLAKE FARENTHOLD, Texas	TED LIEU, California
DOUG COLLINS, Georgia	JAMIE RASKIN, Maryland
RON DeSANTIS, Florida	PRAMILA JAYAPAL, Washington
KEN BUCK, Colorado	BRAD SCHNEIDER, Illinois
JOHN RATCLIFFE, Texas	
MARTHA ROBY, Alabama	
MATT GAETZ, Florida	
MIKE JOHNSON, Louisiana	
ANDY BIGGS, Arizona	

SHELLEY HUSBAND, *Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

JIM SENSENBRENNER, JR., Wisconsin, *Chairman*

RAÚL R. LABRADOR, Idaho, *Vice-Chairman*

LAMAR SMITH, Texas	ZOE LOFGREN, California
STEVE KING, Iowa	LUIS V. GUTIERREZ, Illinois
JIM JORDAN, Ohio	PRAMILA JAYAPAL, Washington
KEN BUCK, Colorado	SHEILA JACKSON LEE, Texas
MIKE JOHNSON, Louisiana	DAVID CICILLINE, Rhode Island
ANDY BIGGS, Arizona	

CONTENTS

JULY 19, 2017

OPENING STATEMENTS

	Page
The Honorable Bob Goodlatte, Virginia, Chairman, Committee on the Judiciary	4
The Honorable Ken Buck, Colorado, Subcommittee on Immigration and Border Security, Committee on the Judiciary	1
The Honorable Zoe Lofgren, California, Ranking Member, Subcommittee on Immigration and Border Security, Committee on the Judiciary	3

WITNESSES

The Honorable David Valadao, 21st District of California, U.S. House of Representatives	
Oral Statement	7
Ms. Sarah Frey, President and CEO, Frey Farms	
Oral Statement	8
Mr. Jon Wyss, Orchard Owner, Gebbers Farms	
Oral Statement	10
Mr. Giev Kashkooli, Vice President, United Farm Workers	
Oral Statement	12

AGRICULTURAL GUESTWORKERS: MEETING THE GROWING NEEDS OF AMERICAN AGRICULTURE

WEDNESDAY, JULY 19, 2017

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

COMMITTEE ON THE JUDICIARY

Washington, DC

The subcommittee met, pursuant to call, at 2:35 p.m., in Room 2141, Rayburn House Office Building, Hon. Ken Buck presiding.

Present: Representatives Buck, Goodlatte, Smith, King, Jordan, Johnson, Biggs, Lofgren, Conyers, Gutierrez, and Cicilline.

Staff Present: George Fishman, Counsel; Tanner Black, Clerk; Stephanie Gadbois, Counsel; and David Shahoulian, Minority Counsel.

Mr. BUCK. The Subcommittee on Immigration and Border Security will come to order. Without objection, the chair is authorized to declare recesses of the subcommittee at any time.

We welcome everyone to today's hearings on agricultural guestworkers, Meeting the Growing Needs of American Agriculture. I recognize myself for an opening statement.

Good afternoon. This hearing is an important opportunity to examine America's agricultural labor needs and the role of foreign workers in this equation, an issue very important to me and the people of Colorado. I look forward to Chairman Goodlatte's introduction of and the committee's consideration of the Agricultural Guestworker Act in the coming weeks. This legislation presents a real opportunity for us to enact fundamental agricultural guestworker reform for the first time in three decades, reform that will benefit American agriculture, the American consumer, and hungry people all over the world.

After all, America is the world's breadbasket and its corn bushel, and its salad bowl, and its potato patch, and its dairy farm. This hearing is not about how we handle certain crops. Instead, it is about year-round labor-intensive agricultural products or products that require additional help at certain times of the year, such as harvest.

Colorado provides a great example of the problem we are examining today. Leprino Foods is the largest manufacturer of mozzarella cheese in the United States and a leading producer of whey protein. They have two production facilities in the 4th Congress-

sional District. When I visited Leprino, I heard stories about how they had the capacity and market to increase their production. However, Leprino can't ramp up their business to meet market demand because the local dairies can't produce more milk.

I also met with those local dairy farmers. They confirm that recruiting employees continues to be the largest challenge to their growing businesses and supplying more dairy products for this country. This is the same story I hear as I visit farm after farm across my district. Labor is the lifeblood of the agricultural industry. Without the ability to find and retain a reliable workforce, our agricultural industry will continue to struggle to meet the market's needs.

When it comes to labor needs, agricultural labor is in a class by itself. There is little debate over whether there enough Americans willing to take on the job of a migrant farm worker. In fact, over the past several decades, our government has only encouraged Americans to abandon such labor, leaving foreign workers to fulfill our season agricultural labor needs.

The Labor Department believes that workers who do have legal status appear to be leaving farm jobs because of age or opportunities for more stable and higher paying employment outside of agriculture, and are being replaced almost exclusively by unauthorized foreign-born workers. What legal labor force options do growers have? Since 1986, the H-2A program has provided visas for temporary agricultural workers. However, over two decades ago, the American agriculture industry told this committee that the program was characterized by extensive complex regulations that limit employers' ability to use the program, and by costly litigation challenging its use when admissions of alien workers are sought. They allege that the Department of Labor was implacably opposed to the program.

For growers, the H-2A program was intended to ensure the availability of sufficient labor for key needs like harvesting. But for a program created to dynamically offer labor supply to those farmers and ranchers most in demand, timeliness has never been a strong suit.

Two decades later, little has changed. An apple grower told us that were it not for the H-2A guestworker program, broken, costly, and perilously litigation-prone as it is, we would be unable to farm at all. One of the most frequently cited reasons our region's farmers go out of business is that they simply cannot continue under the burdens of the current H-2A program.

The H-2A program itself is designed to fail. It is cumbersome and full of red tape. Growers have to pay wages far above the local prevailing wage, putting them at a competitive disadvantage against growers who use illegal labor. Employers must also follow onerous regulations, like the 50 percent rule, which requires them to hire any domestic workers who show up, even after the employer has recruited for U.S. workers and welcomed his or her H-2A workers from overseas.

In short, under H-2A, growers can't get workers when they need them. Bureaucrats decide if employers have a full workforce, not the weather or crop conditions. Moreover, employers constantly face frivolous litigation by those who don't think the H-2A program

should even exist. What growers need is a fair and functional guestworker program, one that gives them access to the workers they need when they need them at a fair wage and with reasonable mandates. Growers need a partner agency in the Federal Government that treats them as allies, not as adversaries.

I look forward to hearing from today's witnesses. We will hear from a Member of the House of Representatives, Congressman David Valadao, who represents one of the largest agricultural districts in our country. We will hear from our growers who do the right thing and utilize the H-2A program. We will hear from an advocate for farm workers, who believes that the program harms both American workers and the guestworkers themselves.

It is now my pleasure to recognize the ranking member of the Subcommittee on Immigration and Border Security, Ms. Lofgren of California, for her opening statement.

Ms. LOFGREN. Thank you, Chairman Goodlatte, and we hope that Chairman Labrador is well. And thank you, Mr. Buck, for chairing this hearing.

As we know from many hearings we have held on this issue over the last two decades, nowhere is evidence of our broken immigration system more glaring and acute than in the agricultural sector, where a critical half if not more of the workforce is undocumented. We can't begin to fix our immigration system without finding a solution for our agricultural sector; I am sure on that we agree. I expect that both chairmen are committed to finding such a solution. But whatever we do, I am afraid we won't have a lasting solution unless it is bipartisan and fairly balanced—balances the needs of employers as well as workers.

Let's look at the facts. As we know from past hearings, mechanized crops, like corn, wheat, and soy, aren't the real problem. The challenge is with seasonal labor-intensive fruit and vegetable production as well as year-round dairy and livestock. These areas require a migrant flexible and experienced workforce.

Now while farmers do their best to plan harvests, expected changes in humidity or temperature can suddenly move a harvest up, giving growers just days to pick valuable crops. Failure to find experienced workers or any workers at all can lead to significant losses. These losses can ripple through our economy. Agriculture continues to be a major sector of our economy and a primary U.S. export. We export so many agricultural products, so many more than we import that the sector is regularly the largest cause of our trade surplus.

Yet, Congress has long ignored the labor needs of this sector. For decades, our country has, in fact, pushed to educate our children for work in other areas. At the same time, our immigration laws have not been updated to fill the void. For example, despite the growing demand for workers, some on a permanent basis, our immigration laws provide only 5,000 green cards per year to people without bachelor's degrees. That is 5,000 per year, not just for agriculture, but landscaping, forestry, hospitality, nannies, and the many other areas where immigrants fill crucial needs. And until recently, the H-2A temporary worker program wasn't widely used.

Farmers often complained to me that the program was too bureaucratic and slow, that the H-2A workers were known to some-

times arrive weeks after they were first needed. Many growers felt they could not make the program work, and the program was used sparingly in some parts of the country for years.

In that environment, should anyone be surprised that market forces worked their magic to pair up willing employers and willing workers. A recent Department of Labor survey indicates that at least half of America's farm workers are undocumented. The vast majority of these workers have been here for a very long time. Most of them have been here for at least 15 years, and some 93 percent have been here for more than 5 years. These workers came to fill critical needs, and many of our constituents are still in business because those workers came. There is no acceptable solution that fails to deal with this reality.

Given congressional inaction, use of the H-2A program has risen sharply in recent years. Last year, some 165,000 H-2A visas were issued, making it a 160-percent increase in the use of the program in 10 years' time. But this program cannot meet our labor needs on its own. We have to find the courage to do what is right, to provide a seat at America's table for those who have long grown the food we serve on it.

The question before Congress is simple: Do we recognize that we have an experienced workforce that has been a critical economic part of the country for years, and provide a rational way for them to obtain permanent legal status to help this country succeed, or do we, as some have previously suggested, attempt to throw out millions of agricultural workers, just to force our growers to import millions of other workers through exploited programs that will harm U.S. workers and foreign workers alike.

I hope that we can all agree that the viable solution is a balanced approach that both preserves the current workforce and provides a reasonable path for new workers. If we learned anything from our many hearings on this subject, it is that a one-sided solution won't work. There are times when we understood that. Years ago, growers and farm workers came together to craft the AgJOBS compromise; and they came together again in 2013 to support reforms in S. 744, the bipartisan bill that passed the Senate by a wide margin.

It is worth noting that every farm organization, every farmers group in the United States and the United Farm Workers agreed on the elements in that bill. It was supported by business and labor and had strong support from many Members on both sides of the aisle.

Unfortunately, that bill never got a vote in the House. But that bill shows that all sides can reach a balanced bipartisan agreement when we work together for a common purpose. I think we can do that again. I stand ready to be part of that process, and I thank the chairman again for holding this hearing and I yield back the balance of my time.

Mr. BUCK. Thank you, Ms. Lofgren. It is now my pleasure to recognize the chairman of the Judiciary Committee, Mr. Goodlatte of Virginia, for his opening statement.

Chairman GOODLATTE. Thank you, Mr. Chairman. As former chairman of the House Agriculture Committee, I have had the opportunity to learn firsthand what farmers face in dealing with the

H-2A program. It is a costly, time-consuming, and flawed program. Each year employers have to comply with a lengthy labor certification process that is slow, bureaucratic, and frustrating. They must expend a great deal of time and money each season in order to prove to the Federal Government what nearly everybody already knows to be the case: Legal, dependable domestic farm labor is very hard to find.

In addition, the program forces them to pay an artificially inflated wage rate. These growers must pay an average of over \$13 an hour in some States and still cannot find enough Americans willing to take the jobs. Further, they must provide free housing and daily transportation. H-2A farms almost always find themselves at a competitive disadvantage in the marketplace. Agricultural employers who participate in the H-2A program do so as a matter of last resort and because they want to uphold the rule of law.

A guestworker program should help farmers who are willing to pay a fair wage for law-abiding dependable workers, not punish them. For this reason, I have long supported replacing the H-2A program with a workable guestworker program. Instead of encouraging more illegal immigration, successful guestworker reform can deter illegal immigration and help secure our borders.

We should enable the large population of illegal farm workers to participate legally in American agriculture. Those eligible will provide a stable legal agricultural workforce that employers can call upon when sufficient American labor cannot be found.

In addition, a successful guestworker program will provide a legal workable avenue for guestworkers who are trying to provide a better life for their families.

It is well past the time to replace the outdated and onerous H-2A program, to support those farmers who have demonstrated that they will endure substantial burdens and bureaucratic red tape just to employ a fully legal workforce, and to offer a program that is amenable to even more participants in today's agricultural economy.

In the 113th Congress, I introduced, and the committee reported, the AG Act. This bill would replace the H-2A program with a new program that provides growers with streamlined access to guestworkers and enables dairies and food processors to participate.

The bill would assure a reliable workforce by creating a program that is market-driven and adaptable. It would reduce red tape by adopting an attestation-based petition process. It would, subject to certain conditions, allow guestworkers to be employed at will, making it easier for workers to move freely throughout the agricultural marketplace to meet demand. It would protect program users from abusive lawsuits.

The bill will not recreate the pitfalls of the H-2A program. It will not require growers to hire and train unneeded workers after they have engaged in domestic recruitment and their guestworkers have arrived, provide free housing and transportation, or pay an unrealistic or uncompetitive wage rate dreamt up by Labor Department bureaucrats.

The new program would be, at its core, a true guestworker program. It does not create any special pathway to permanent legal status. The bill simply allows agricultural employers to hire, under the guestworker program, aliens who had been unlawfully present, just as they can hire any other foreign national. They would be required to abide by the same conditions as other guestworkers, including leaving the U.S. periodically, to ensure that they retain ties to their home countries.

I have been in discussions with the agricultural community ever since the committee reported the AG Act over 4 years ago. The bill that I will shortly reintroduce makes a good faith attempt to take into account their comments and concerns. We cannot squander the golden opportunity we have this Congress to enact meaningful agricultural guestworker reform.

I am pleased to welcome all of our witnesses here today. I thank the chair for holding this important hearing, and I want to thank in advance all of our witnesses for sharing their insights with us today.

Thank you, Mr. Chairman.

Mr. BUCK. Thank you, Mr. Goodlatte.

We have a very distinguished panel today, and I will begin by swearing in our witnesses before introducing them. If you would all please rise.

Do you swear that the testimony you are about to give before this committee is the truth, the whole truth, and nothing but the truth, so help you God?

Let the record reflect that all the witnesses responded in the affirmative. Please be seated.

I will now introduce the witnesses and then call on them for their opening statements.

Congressman David Valadao was born and raised in agriculturally rich Hanford, California. As a lifelong resident of California's Central Valley, he has been active in agriculture, on dairy industry groups as well as many local causes, including Children's Hospital of Central California, 4-H, Future Farmers of America, and various Catholic charities.

In 2012, Mr. Valadao was elected to represent California's 21st Congressional District, which includes Kings County and portions of Fresno, Kern and Tulare Counties. In November 2016, he was elected to serve a third term. Representative Valadao serves on the Appropriations Committee, including on the Subcommittees on Agriculture, Military Construction and Veterans Affairs, and Transportation Housing and Urban Development. Welcome, Mr. Valadao.

Ms. Frey is the founder and CEO of Frey Farms. Today, she and her four brothers and their dedicated team of employees operate farms and agricultural facilities in Florida, Georgia, Missouri, Arkansas, Illinois, Indiana, and West Virginia. Their multi-State operation specializes in growing, packing, and shipping of fresh market produce, including watermelons, cantaloupes, sweet corn, fall ornamentals, and hard squash. And Frey Farms is one of the Nation's largest pumpkin shippers. Frey Farms has been using the H-2A program since 2002. Welcome.

Mr. Wyss was born in Thermopolis, Wyoming, and married his wife Melanie in 2003. Prior to joining his wife's family company,

Gebbers Farms, as an analyst and government affairs director, he served as the chief deputy assessor for Spokane County, worked for various U.S. Bankruptcy Trustee offices, and temporarily served as a Washington State Senator.

Mr. Wyss also serves on the U.S. Apple Board of Directors, American Farm Bureau Labor Committee, and is the vice president of USA Farmers. He attended Texas Tech University and Lubbock Christian University in Lubbock, Texas. He has two daughters and one son. Welcome.

Mr. Kashkooli is the vice president of the United Farm Workers of America, overseeing the union's political, legislative, and communications work. He has worked for the UFW for 20 years in California, New York, Washington, D.C., and Florida. He graduated from Brown University in Rhode Island in 1994, where he first became an active supporter of the United Farm Workers cause.

Mr. Kashkooli has managed dozens of political races for the UFW, including the election of county, State, and national candidates. He continues to play a key role in UFW's immigration reform efforts.

Each of the witnesses' written statements will be entered into the record in its entirety. I ask that each witness summarize his or her testimony in 5 minutes or less. To help you stay within that time limit, there is a timing light in front of you. The light will switch from green to yellow, indicating that you have 1 minute to conclude your testimony. When the light turns red, it indicates that the witness' 5 minutes have expired.

I will now recognize Mr. Valadao for his opening statement.

TESTIMONY OF THE HON. DAVID VALADAO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. VALADAO. Good morning, Chairman Buck, Ranking Member Lofgren, and members of the subcommittee. I appreciate the invitation to testify before you today during today's hearing, examining the labor needs of the agriculture industry throughout the United States.

As the son of immigrants, immigration is an issue close to my heart. As a Representative of California's 21st Congressional District and a dairy farmer myself, I understand the critical role immigrants play in California's agriculture industry. The success of our agriculture industry depends on immigrants, and without them the industry's economic viability and our rural communities will greatly suffer. I am hopeful that the work done in this subcommittee today will further our efforts to successfully update our Nation's immigration policies.

As you know, farming in California is extremely labor-intensive. Many immigrants come to this country to fill farm worker positions and do the hard work necessary to care for livestock and harvest produce in a timely manner. Their strenuous work makes it possible for families across America to put food on their tables. However, our agriculture industry faces a serious shortage of immigrant agriculture workers, and the truth is most Americans are unwilling to fill these positions.

The shortcomings of the H-2A program have exacerbated this shortage. A major issue facing California's farmers and ranchers is

the program's inability to meet the needs of year-round farmers, including dairy and livestock farms and ag operations with multiple crops and harvests. We must repair the system, both for the current workforce and in order to ensure our agriculture communities have access to the workers they desperately need for the years to come.

Hardworking immigrant farm workers are not only the backbone of our agriculture industry, but they and their families are the heart and soul of many rural communities. However, it is an unfortunate reality that the policies implemented by the previous administrations did little to improve our immigration system. Instead, executive orders and regulations trapped many workers on this side of the border, preventing them from returning to their families back into their home country and imposing unfair ultimatums on those who contribute so much to our economy.

Further, we must reform the system to provide both employer and employee choice and flexibility. This can be achieved by ensuring employees have the freedom to move from employer to employer without contractual commitment. In doing so, we can ensure our farmers and ranchers have access to the workforce they depend on. Without the hard work of skilled immigrants, California's agriculture industry faces serious consequences and risks inflicting consumers with high prices and decreasing our food security as a Nation.

Reforming our immigration system, especially as it relates to our current and future workforce, is a complex undertaking and requires a comprehensive approach. For too long, extremes on either side of the aisle have discouraged real and meaningful discussion on immigration reform. However, this subcommittee's commitment to addressing the agriculture industry's labor crisis does not go unnoticed.

I am hopeful that the work done by this committee will ultimately culminate in the implementation of a fair and balanced immigration policies that ensure an adequate immigrant workforce while continuing to combat illegal immigration.

Again, thank you for the opportunity to testify today. I look forward to working with the committee, the Congress, and the administration, to craft a bipartisan solution to immigration reform that ensures our Nation's safety and protects our agriculture communities and the economy.

Mr. BUCK. Thank you, Mr. Valadao.

The chair now recognizes Ms. Frey.

TESTIMONY OF SARAH FREY, PRESIDENT AND CEO, FREY FARMS; JON WYSS, ORCHARD OWNER, GEBBERS FARMS; AND GIEV KASHKOOL, VICE PRESIDENT, UNITED FARM WORKERS

TESTIMONY OF SARAH FREY

Ms. FREY. Good afternoon. Thank you, Chairman Buck, and all the members of the subcommittee for the opportunity to be here today and to share my thoughts and experiences with all of you in respect to the H-2A program and the need for an expanded ag workforce.

First, a bit about myself and my farms. My name is Sarah Frey and I am the CEO of Frey Farms, headquartered in southern Illinois. We specialize in the multi-State growing, packing, and shipping of fresh fruits and vegetables. We are best known as the Nation's largest pumpkin farm. However, pumpkins are actually a small part of what we produce. We actually grow millions of watermelons. Our farms and facilities are located in Florida, Georgia, Illinois, Indiana, Arkansas, Missouri, and in West Virginia.

Frey Farms is actively engaged with policymakers on a variety of issues, and we are especially thankful for this opportunity to share our perspective on the H-2A guestworker program that we have relied on for 15 years.

American consumers demand locally sourced fruits and vegetables when in season. Expanding our farming operations and bringing quality local fresh fruits and vegetables to the Nation's top 25 grocery retail chains would not have been possible without a reliable workforce. While expensive and laden with bureaucratic inefficiencies, the H-2A guestworker program has been the only practical solution for our company. Our farms continue to face challenges like most farms. Ours are in rural areas and rural communities, far away from larger labor pools needed to fill the jobs that are required and necessary for harvesting specialty crops.

Many of the specialty crops grown in the United States have harvest windows as short as just a few weeks, due to the geographic location and general regional climates associated with the farmland. Relocating a domestic family every few weeks is logistically unfeasible. Therefore, lack of access to domestic labor, combined with an overburdened Federal guestworker program, means that fruit and vegetable providers are in a daily struggle to secure an adequate workforce.

The reality is this: Much of the Nation's foreign-born farm workers do not have proper work authorization, and the emphasis on enforcement without an accompanying effective legal guestworker program puts our industry and our Nation's ability to sustainably and affordably feed our people in jeopardy.

I want to be clear. We support strengthening our Nation's ability to uphold the law. We want our employees to be legally authorized to work in this country, and that is why Frey Farms and the produce industry have long advocated for reforms to our Nation's immigration system to deal with this issue. We believe those who are working in agriculture without the proper documentation should be able to make their presence known and join a guestworker program. When their seasonal harvest work is finished, these workers could return to their home country, as the current H-2A program requires them. Transportation could and would be provided by their American employer.

Moreover, the legality of these immigrant employees would no longer be in question, and regulations for the proper execution of the law would be in place. These workers would then be allowed to return under the lawful rules of a new guestworker program, and the American farmer could operate without the stress and anxiety of wondering where their next group of employees will come from.

The foundation is in place to help ag bridge the gap between its current supply and the vastly disparate demand for labor. We urge you to do what it takes to ensure that whatever immigration legislation Congress debates does not become final without a mechanism for addressing ag's real and urgent labor needs. Failure to address these needs will undermine all the good work Congress has done in legislation, like the farm bill and its support for specialty crops.

The very essence of agriculture is growing healthy nutritious food. It all depends on congressional action now to make the necessary reforms to a guestworker program or overhaul and create a new guestworker program.

I thank you on behalf of Frey Farms and the ag community for the continued work and service that you dedicate to our livelihoods. With that, Mr. Chairman, I am happy to take questions.

Mr. BUCK. Thank you, Ms. Frey.

The next witness, Mr. Wyss, you are recognized for 5 minutes.

TESTIMONY OF JON WYSS

Mr. WYSS. Mr. Chairman and members of the committee, thank you for having us today and for this opportunity.

Gebbers Farms is a family-run and operated farm that is been in Okanogan County in Brewster for over a century. We raise thousands of acres of apples and cherries along the Columbia River, but we also have cattle and timber, and manage the thousands of acres of that timber.

Growing up in rural Wyoming, I watched the temporary labor force come and go in the sugar beet harvest. And that whole time growing up, I wondered why these immigrants were here taking American jobs that Americans would do. I would hold this belief until 20 years later, when I moved to the State of Washington and met my now wife. Our dating relationship nearly ended over our differing views on immigration. But to help me understand the immigration and the programs and the need for seasonal workers, we went to her cherry farm.

The drive ended in the orchard with an immigrant worker meeting us and handing me a ladder and a bucket, and the goal was to start at one end each and meet in the middle. It wasn't close. In that short timeframe, I learned that my 20 years of beliefs needed to change.

Without an available domestic labor supply, we entered the H-2A program in 2010. We quickly discovered that it is not easy to operate in 2010 like you do in 1950, in the fifties, when the program was designed by Dwight Eisenhower. Agriculture's production today is nothing like 1950. 1986 update did not fix the program. So we are asking you to update the current H-2A program to something that is functional and workable.

Due to the nature of our crops, we have to apply for four separate contracts. That means filing those four contracts with four different agencies and four opportunities for delay. Our first year in H-2A, we hired 300 workers from Jamaica and 750 from Mexico, and we continue to increase the number of workers each year, even though wages continue to climb. Fortunately, because we pack all of our own fruit, we are able to use H-2A in our packing house and

supplement the continued loss of domestic labor. Other growers aren't so fortunate and don't have access to the H-2A program, and Congress should allow more flexibility for other employers to join.

Once our H-2A workers arrive, they are paid the government-mandated Adverse Effect Wage Rate. In Washington State, it is \$13.38 per hour, one of the highest in the country. The prior administration changed the rates at will with little or no advance notice, which caused significant challenges to our payroll, forcing us to reprint all contracts and updating the wage and hour posters at a significant expense.

Some would say, well, if you would just pay more, you would get more workers. But I would point out that we are already paying over \$13 an hour, and the local retailers and other businesses in our community are paying minimum wage of \$11 an hour. So if it were about wages, I would ask, why are people taking the other local seasonal jobs than those at the farm, where we also provide housing and transportation.

In 2014 and 2015, our county suffered back-to-back massive wild fires, burning nearly a million acres, of which a majority was timberlands. First, there were two critical impacts that impacted our labor supply. First, the fires substantially increased the need for seasonal labor for reforesters and increased the need on the public and private sector lands. Our own personal timberlands, we have to replant over 8,000 acres. However, that requires an H-2B visa. The Department of Agriculture oversees forestry, so it would make sense that reforestation would fall within the Department of Agriculture.

Second, the fires took an additional toll on our agriculture workers, because they shifted from farm work to reconstructing the 300 homes that had to be rebuilt within the area. We live in a community of 2,100, and our county is 5,000 square miles, but only has 41,000 total people. So you can see the transfer that has occurred.

The H-2A program does provide a legal stable program for workers to come to our farm, but the program is not reliable and has been plagued with inefficiencies and delays by DOL and others. For example, the entire visa system was down at the State Department 2 years ago. That caused a backup of thousands of workers who couldn't get their visas, and the employers were left in some cases without workers for weeks. In our industry, we pick, pack, and ship every cherry we have in 45 days. A delay of weeks would have made us miss our entire packing and harvesting season.

It is important to note, though, that our community has rallied around these H-2A workers and they have actually become part of our community. Each August, our Jamaican H-2A workers celebrate the Jamaican Independence Day at one of our labor camps. The workers prepare authentic Jamaican food, play music, and host a soccer tournament. The event is open to the public and serves as an annual fundraiser to support charities back in the home country of Jamaica.

Our local sheriff told me before I came out, I remember the days when we used to come to the labor camps a couple times a week and we were picking people up. Now our off-duty officers are coming to your labor camp to pick workers up to go to church. There

is a significant difference that has occurred, a change that is occurred as our workforce has changed.

I leave you with this thought: Washington agriculture produces 300 commodities, at a value of \$68 billion, and produces 200,000 jobs. That is larger than Boeing, \$15.1 billion of that value is commodities that are exported out of the State of Washington and the ports, which makes us truly the refrigerator to the world. Without access to a legal stable supply of labor through some type of worker program, 12 percent of the Washington State economy is at risk.

I look forward to working with this committee, the rest of Congress, and the administration, to move forward with a permanent solution on this issue. And we are here for each of you to be a resource and answer questions as we go along the way. Thank you.

Mr. BUCK. Thank you, Mr. Wyss.

Mr. Kashkooli, you are now recognized for 5 minutes.

TESTIMONY OF GIEV KASHKOOLI

Mr. KASHKOOLI. Thank you. Thank you, Chairman Goodlatte and Ranking Member of Judiciary Conyers.

The CHAIRMAN. Is your button on?

Mr. KASHKOOLI. Thank you. Thank you, Chairman Goodlatte and Ranking Member of Judiciary Conyers, Acting Chair Buck, Ranking Member Lofgren.

My name is Giev Kashkooli, and I am a vice president with United Farm Workers, the Nation's first and largest farm worker union. We work with farm worker organizations in close to 20 different States on the issue of immigration.

A growing problem in American agriculture is the difficulty in matching willing workers in the United States with agricultural employers trying to hire people so that we can continue to feed the United States.

I was really moved by the Acting Chair Buck's words when he said that labor is the lifeblood of the agricultural industry, the lifeblood of the agricultural industry. And while Mr. Wyss and Ms. Frey and I have been working on this issue to change immigration for over 10 years now, each of us, I don't think any American has stopped eating over the last decade while we haven't finished fixing immigration. The issue has not been—although we disagree on many things, we have been able many times under different administrations to come together on an agreement.

The issue is matching willing workers to willing employers. Again, because we are talking about the lifeblood, this is tough work. The watermelons harvested on Ms. Frey's farm, those are 3-to 4-pound watermelons that are picked by crews of workers who literally pick tons of watermelons in a day's work, over and over again.

To do the cherries, right, close to the border of Canada, it gets to freezing temperatures in the winter with the folks doing that work. By the summer, it can get deadly hot, and I mean literally deadly. Dozens of farm workers around the United States have died from the basic lack of water and shade that farmers that are not playing by the rules like Mr. Wyss and Ms. Frey apparently are.

Because we are talking about human beings, that is why we go through four agencies. We are talking about people coming into the United States from a different country. We are talking about making sure that U.S. citizens and legal permanent residents have a chance to get the job. Close to half of the workforce does have U.S. citizenship or legal permanent residence. And for those U.S. citizens who are willing to take on the work who maybe are outside of it, that is why that 50 percent rule is in place. If someone is willing to come and pick the crops and they are a U.S. citizen and legal permanent resident, they should have access and be able to get that job so that we eat.

The reason it is free housing is because, as Ms. Frey described, the jobs sometimes are 2 to 4 weeks. I don't know too many people who are prepared to rent an apartment, first and last month's rent, for just 2 to 4 weeks. That is why free housing is important. The reason that housing needs to be inspected and not just attestation is because just a couple months ago, in Arizona a farmer tried to house people in converted school buses, 100-degree heat, no ventilation, converted school buses, and expected people to cook their meals in those converted buses.

The reason there is litigation is because a farmer, an administrative law judge found in California a farmer was discriminating against U.S. citizens applying to work as workers, was insisting that those same workers give kickbacks in order to work off of their meager dealings and a whole other host of issues. That is why that rule is in place.

The Adverse Effect Wage Rate, although it has a complicated name—and that is the wage rate that is required under the H-2A program—is actually not that complicated. It is the average wage rate, and it is determined by a survey that the government does with current agricultural employers to determine the average. And, as any math teacher will remind us, the way the average works is if you pay somebody less than the average, then your group average is going to go down. So the reason you have an average wage rate is to make sure that the U.S. workers and legal permanent residents, their wages don't go down.

There are some facts that we all agree on. The current H-2A program has no cap. The program has doubled since 2012, as Ms. Frey's diagram shows, and tripled in the last decade. It is up 30 percent over the last year. And the Department of Labor—this one we may agree with, but it is a fact the Department of Labor has a timely approval rate of 98 percent over the last year.

Fortunately, there is a positive workable solution. The first step should be to honor the people who are the lifeblood, as Chairman Buck said, of our system. Allow farm workers, professional farm workers who have worked 100 days in the previous 2 years to earn legal status. Congressman Gutiérrez has a bill that does that, H.R. 2690, and there is over 50 cosponsors. Thank you.

Mr. BIGGS. [Presiding.] And now I turn it over to the chairman of the Judiciary Committee, Mr. Goodlatte.

Chairman GOODLATTE. Thank you, Mr. Chairman.

Let me address my first question to Mr. Wyss and Ms. Frey. Isn't one lesson that we learned from the 1986 legalization of illegal immigrant farm workers, when they receive permanent residence

they leave the fields for more attractive jobs in the cities? In fact, Philip Martin, professor of agricultural economics at the University of California at Davis, found that by 1997-1998, the percentage of crop workers who had been granted permanent residence through the 1986 act had fallen to only 16 percent.

Isn't it the case that if Congress were to again grant a special pathway to citizenship to illegal immigrant farm workers that growers would soon be left in the lurch? Mr. Wyss.

Mr. WYSS. Thank you, Mr. Chairman, Congressman Goodlatte. I can only speak for our farm and what happened with us after 1986. We did go through the legalization program and did have a considerable number of our workers adhere to that and receive their citizenship. Many of them became actual business partners with some of the members of the family and now own their own orchards. And so they have moved off the farm, but they have become orchard owners on their own.

We did see a shift after a few years of the workforce transitioning into other jobs, you know, in the hotel, restaurant industry, construction. The area in which we live, the labor pool is small and they had already lived there, so they didn't actually leave the area, but some of them did take other jobs. But, like I say, I can go through the list. Frankel Lucas, he now became a citizen through that program—

Chairman GOODLATTE. You don't need to. I turn to Ms. Frey. I have got a couple other questions and I have a limited amount of time.

Ms. FREY. So your question—could you repeat the question?

Chairman GOODLATTE. The question basically is, if we were to have an amnesty program like we had in 1986, my understanding from the American Farm Bureau is that about a million people who worked in agriculture were given legal status, and about half of them left farm work because they could work anywhere. They could drive a cab. They could own their own business, as Mr. Wyss suggested. And it didn't solve the problem. In fact, I would argue that it enhanced the problem of illegal immigration.

Ms. FREY. Well, I think that it is pretty common knowledge we all want a better life for our children, and even those who came here illegally and worked in agriculture. Yes, it is true, people do leave ag once they have worked here, because they do want a better and different life for their kids.

So it is an unfortunate thing from this side of the table when we need an expanded ag workforce, and that is why I think broadening or expanding a guestworker program is really our solution, because it is going to be very difficult to keep people working in agriculture long term.

Chairman GOODLATTE. Thank you. As someone farming in multiple States, what have you been observing regionally as far as the growing use of the H-2A program?

Ms. FREY. I found at Frey Farms, we used to be in the minority. We are headquartered in southern Illinois. I didn't start the company in a border State. I started the company in the Midwest. And most of the fruits and vegetables we produce, the biggest volume, the largest volume comes out of the heartland.

And what we—you know, throughout the years, we didn't have access to an urban population of ag farm workers, so we had to participate in the H-2A program. It was out of necessity when I was first building the company. Today, though, we are seeing those numbers increase with employers.

As workers are leaving agriculture, more ag employers are looking to and for reliable guestworker solutions, because people are leaving ag. Workers are leaving ag. And so we have—you know, we have noticed that throughout the years, where we used to be in the minority, we are no longer. And even States like California, many growers out there provide or request hundreds if not thousands of H-2A visas, because there simply isn't enough labor to fill their positions.

Chairman GOODLATTE. So you think the solution is to improve the guestworker program?

Ms. FREY. Absolutely. Absolutely. Especially—our company, our business, our farms are different, because, like I said, we are not located in border States. We don't have access to the populations of ag workers, such as the State of California or Arizona. You are talking about Illinois, Indiana, Arkansas, Missouri, Iowa. We simply don't have access to the amount of workers needed in these rural areas in such a short amount of time.

Now, if we were offering—if we were able to offer year-round employment, that would be very different and we would be able to fill those positions, I believe, with American workers. But it is simply not the case, because we are growing these crops in rural areas where we simply don't have the population to be able to support the number of harvest jobs needed for such short seasonal time windows.

Chairman GOODLATTE. Thank you.

Thank you, Mr. Chairman.

Mr. BIGGS. Thank you. I now turn the time over to the ranking member of the subcommittee, the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you very much. I think it is important to separate out what used to be and what is, in terms of looking forward. It used to be—and we had hearings on this. We had a lot of complaints, that the H-2A program was always late. I think a majority of the workers arrived after the harvest was to be collected. That is no longer the case. In the last 2 years, more than 95 percent of the applications have been approved. Ninety-eight percent of them were on time. So that is been a transformation of that program, and we ought to proceed with that understanding.

I just listened carefully to the testimony, and, Ms. Frey, you suggested that the current undocumented workers step forward, become H-2A workers and go back to their country, if I heard you right. And I think we really need to make a separation between what we do with the individuals who have been here and what we are going to do proactively for an additional workforce, because 55 percent of the farm workers who are undocumented here have been here more than 15 years. More than half of them have children who are U.S. citizens.

So the idea that people who have been here 15 years or 20 years, have U.S. citizen children, they have grandchildren, that they are

going to step forward and go to some foreign country, you know, it is just not going to happen. And so we are not solving the problem. And then we need to think about how are we going to preserve or craft a program that works and that—for our future flow of farm workers. So I think the two solutions are not the same, if I may.

I am interested also in not just timeliness, but how the H-2A program works and doesn't work. It is my understanding that just yesterday, there was an amendment in the appropriations bill to allow the H-2A program to be used to fill permanent positions.

And I am wondering, Mr. Kashkooli, what do you think that would do to labor market stability in the current ag worker system, that amendment?

Mr. KASHKOOL. We were stunned to learn that yesterday's Appropriations Committee chose to legislate on an issue of jurisdiction here, so that year-round workers would be allowed to apply to this H-2A program. It was really a surprise. Again, Ms. Frey and Mr. Wyss spoke eloquently.

Ms. Frey spoke about the need on seasonal work. What yesterday's action did speaks to year-round work in a single location, like a dairy. And the dairy industry is a place—in any other year-round operation, you are competing in the free market for workers. The dairy industry is an industry where literally dozens of workers have died every year, some in the most gruesome ways: A gentleman named Randy Vasquez in Washington State just 2 years ago, and then just last year a gentleman named Roberto Vasquez, the same last name, not related, but same fate, died drowning and suffocating in a manure pool. That company where he worked was fined \$5,000 for lacking some basic protections on a safeguard that every dairy operation knows that these manure pools exist.

So the notion that the H-2A program would be legislated yesterday in an Appropriations Committee for workers who are working year-round was stunning to us. We think it more appropriate that the Agricultural Worker Program Act, offered by Congressman Gutiérrez, H.R. 2690. This would take the current professional workforce who have worked in agriculture for over 100 days, and then if they continue to work in agriculture over the next 5 years 100 days a year, then they would be able to get—apply for permanent legal status.

That creates an incentive for that group of people to stay in agriculture. I think Congressman Goodlatte overstated the issue about workers leaving in 1986. More reliable data suggests only 1.9 percent of the workforce left annually over a 20-year period. That said, the Agricultural Worker Program Act, by having people be able to earn legalization would be able to move into jobs that are year-round work and they would have the skills to do it.

Ms. LOFGREN. As a matter of fact, if the Department of Labor survey is accurate and I assume it is, it is actually less percentage than I had been saying over the years. It is a little over 50 percent that are undocumented. But half the farm workers are documented or Americans. So certainly that is a factor to weigh in.

Mr. KASHKOOL. In truth, I think it is a little difficult to know just exactly how many people have legal status or not. But what we know is that it is probably around half that have citizenship or legal permanent residence.

Ms. LOFGREN. My time has expired, so I yield back, Mr. Chairman.

Mr. BIGGS. Thank you. I recognize Mr. King from Iowa.

Mr. KING. Thank you, Mr. Chairman.

And I thank the witnesses for your testimony. I am sitting here thinking about the bigger picture, and it occurs to me that each of the witnesses have a sliver of this American economy to testify to, and that is the scope of your experience and your business. And yet this Congress has the responsibility to look at the entire 360-degree scope of the destiny of the United States of America.

And so how do these pieces of this jigsaw puzzle fit into the overall picture and what works out best for the future of our country? And it starts me thinking about some numbers that I haven't heard here. One of them is this number, 95,102,000. That is the number of Americans who are of working age not in the workforce. And there is another number, 7 million. That is the unemployed Americans. So that is 102 million Americans of working age not in the workforce. Then I have some couple of months ago asked my staff, carve that number down for me, because there will be some people in that that are disabled and others that have other obligations that aren't able to work.

So what if we were mobilizing America on, say, a World War II status, where we put everybody to work that we could because we needed to do everything possible simultaneously. We had an unemployment rate then of 1.02 percent, by the way.

But if you carve that number down of 102 million, it still gets down to about 82 million people there that aren't contributing to the GDP from the production side of this scale. And so it starts me thinking about how this works in a country if we are bringing people into America to do work that—nobody has quite said it here—that some say Americans won't do. And, of course, I would reject that, because I can't find anything I haven't actually done that wasn't, you know, too distasteful for me to do if it needed doing. And by the way, if it paid well enough, that helps a lot also.

So roughly one out of three Americans are not in this workforce, and yet I continually hear the request that we should bring more people into America. And by the way, they aren't all going to be working, but probably a higher percentage of them than they are in America. So if one out of three aren't working, Marilyn and I raised three sons, and they got paid for the work they did, but also they got an allowance earlier in life.

And I am just wondering what it would be like if one of those sons had said, I am not going to do my chores, I am not going to mow the lawn, I am not going to get the mail, I am not going to change the oil on that bulldozer, and I am not going to pick up that shovel and dig that ditch, all the things we did in the construction business. I want my brothers to do that work and I want you to pay me my allowance anyway. You know that wouldn't last one day, and pretty soon that one that wouldn't work would be the one doing all the work until he learned the lesson to carry his share of the load.

So I am wondering how a country like the United States of America, with our excellent work ethic that we have and this spirit of entrepreneurship that we have, how we can tolerate what is

going on? How we can be taxing the producers of America and transferring that wealth over onto the couches of America where people aren't getting off of it to go to work sometimes for three generations, and then at the same time press that we should bring people into America to do this work that we already are subsidizing people sitting on the couch, paying them not to do that work?

And so I think imagine what America would be like today if we were a continent unto ourselves, say similar to Australia, and we didn't have a land bridge to the north, south, east or west, and it was thousands of miles of ocean, and we had secured our borders, and then we had the labor force that was within us or the labor force that was brought in legally into the United States of America.

Now I will narrow it down to that which you do have focus on, and I am going to ask Mr. Wyss, because he has volunteered, and that is this: What would America look like if we hadn't evolved into this massive dependency on illegal labor? Would the fields grow up to weeds? Would we have more automation? Would there be more people working in agriculture? Would there be higher wages, higher benefits? Would the standard of living and quality of life be leveled more?

And I am going to go to Mr. Wyss, as I promised, for the answer to that.

MR. WYSS. Thank you, Mr. King. I think your analysis is very good. And one example that I would give for our area, the reason that we jumped into the H-2A program the way we did is we followed all the government regulations and we received an ICE audit, and so we had to let a considerable number of our workers go. At the same time that that happened, a sawmill closed in our area less than 20 miles away and 200 people were without employment. We offered the job to all 200 people from the sawmill to come work in our agricultural fields, and they chose not to take the job.

MR. KING. I am sorry, excuse me. I have only got 14 seconds left.

MR. WYSS. They wouldn't take it because they stayed on unemployment.

MR. KING. I understand. And we have hired employees for 42 years, so believe me, I do understand.

I will just make this point into the record at the close of this time as the seconds tick down, and that is this: That Mr. Goodlatte stated that he would like to see these workers go back at least once a year. I believe the best program to assure that that happens is a bonding program, so that the employment agencies could ensure that this does happen, and that would give a high degree of comfort to the program. So I want to put that suggestion in.

I appreciate everybody's testimony, and I yield back the balance of my time to the chairman.

MR. BIGGS. Thank you.

At this time, Mr. Gutiérrez.

MR. GUTIÉRREZ. Thank you, Mr. Chairman. And I thank Mr. Conyers for allowing me to proceed with questions. Thank you, Mr. Conyers. And I want to thank all my colleagues for having cosponsored the bill on the democratic side and look forward to working for a bipartisan approach in the future.

First of all, let's not go into tangents here about the American government paying people to sit at home on their sofas. I don't

know where that program is, but I guess I will search for it. That is not the problem here. You see where we are going, right? The future of America, and people are lazy, and if they weren't lazy, we wouldn't need a guestworker program.

Look, I want to make clear to everybody Ms. Frye and Mr. Wyss have been invited by the majority to come and speak here. And I am willing to be contradicted, but I listened attentively to what you had to say, and it seems to me that Mr. Wyss said that he needs these workers to come because the workers who live in the State of Washington would prefer to make \$11 an hour working in the service industry than making 13 and having a home.

And Mrs. Frye made a little bit different argument if I listened correctly. Ms. Frye's argument is there is just not enough people where she farms, there is a lot of acres to farm and not a lot of people to do the farming. So we need to bring a population. It isn't that people are lazy out in middle Illinois and in Virginia and in Georgia, there is just not enough of them. So we need to bring people in. And I got to tell you, I don't see people—did I get it right, Ms. Frye?

Ms. FRYE. You nailed it.

Mr. GUTIÉRREZ. Okay. Did I get it right, Mr. Wyss?

Mr. WYSS. Yes.

Thank you. I just want to make sure—I mean, my friend, Mr.—they are going to just say, well, you two are in the same—right? You are always together, so—but these are—the Republicans invite farmers to come before this committee to tell us what their problems are, and ask us for solutions, and what we do is we talk about people on a couch getting paid by the government and bonds.

Mr. Wyss, if I heard you correctly, you said there were, like, four different agencies. Do you want to add another agency, a bonding agency, to get your workers?

Let me ask the question—Ms. Frye, do you have workers that return to you, year in and year out, to come and work your fields?

Ms. FRYE. Every year for the past 15 years.

Mr. GUTIÉRREZ. So they come, they work legally under the program—

Ms. FRYE. Correct.

Mr. GUTIÉRREZ [continuing]. Leave and then come back to do the crops the next year?

Ms. FRYE. That is accurate.

Mr. GUTIÉRREZ. You look forward to them coming back?

Ms. FRYE. I do.

Mr. GUTIÉRREZ. Do you see them as farmers?

Ms. FRYE. I see them as farmers, and I see them as family.

Mr. GUTIÉRREZ. Thank you. You see them as farmers, and you see them as family.

Mr. Wyss, you got people that come back regularly, know your farm, know your foremans, know your family?

Mr. WYSS. I have about a 98 percent return rate.

Mr. GUTIÉRREZ. Ninety-eight percent. So they come, they work, and then they come back the next season. And, with you, it would probably be, like, 6, 7 weeks, right? Cherries, 6, 7 weeks?

Mr. WYSS. We bring workers in for 10 months out of the year for different contracts.

Mr. GUTIÉRREZ. For different contracts. But, like, the cherry season has a certain——

Mr. WYSS. May to November.

Mr. GUTIÉRREZ. May to November.

And, Ms. Frye, do you have shorter windows of opportunity?

Ms. FRYE. We do. Some harvest seasons are only 4 weeks.

Mr. GUTIÉRREZ. Ms. Frye, did you work in the fields when you were a young girl?

Ms. FRYE. I did. Every day.

Mr. GUTIÉRREZ. Tell me what you did.

Ms. FRYE. I harvested melons.

Mr. GUTIÉRREZ. You harvested melons. Watermelons?

Ms. FRYE. Watermelons, cantaloupes, sweet corn.

Mr. GUTIÉRREZ. Mr. Kashkooli talked about how back-breaking the work. So there is the union representative here, right, the one that wants to organize your workers and negotiate with you in the future. Would you agree with them that it is back-breaking work?

Ms. FRYE. It is very hard work.

Mr. GUTIÉRREZ. Is it hot?

Ms. FRYE. It is very hot work.

Mr. GUTIÉRREZ. Thank you.

So we have people, the farmers, have come here to represent their workers as, number one, people representing the view of the majority, that have been invited by the majority here to come and speak to us. People that work hard. They are farmers. They are family. They come back all of the time. They like them. The police come by and then take them to religious activities. I imagine they take them to the local churches. That is the kind of community that they have developed. I want to see that community develop.

And, look, let's stop talking about oh, well, we legalized the illegals back in 1986, and then they all ran off the farms. Half of the people working the farms are legal. They are citizens and permanent residents. So they didn't race off of the farms. We just need more people.

I am really happy. This is what my mom—I want the majority—here is what my mom—I think this is a very American expression, but she didn't say it in English. And that happens a lot in America, that we get American expressions that aren't in English. They get told. She told me, she said, [speaking in foreign language]. Study hard now, as a child, so you won't have to work so hard as an adult. That is what we do. That is why I sent my daughters——

Mr. BIGGS. Gentleman's time has expired.

Mr. GUTIÉRREZ [continuing]. To college. That is what we do. Let's stop saying, oh, we can't do this program because then people are going to want to do better for themselves. It is America. They should be able to do better for themselves.

I thank the witnesses for coming before us.

Mr. BIGGS. Thank you.

And now the chair recognizes Mr. Johnson from Louisiana.

Mr. JOHNSON. Thank you, Mr. Chairman. Thank all of you for your valuable testimony. This is really helpful. I am from the State of Louisiana. Agriculture is a big deal. And we have the same concerns that you do.

And, Ms. Frey, first question for you. You mentioned how difficult it is been for you in the farm to find long-term employment from local citizens within the community. If I gave you the opportunity and just pitch you a softball, what would you say is—I mean, specifically to elaborate on the H-2A program, what can we do to make it more workable for the farm?

Ms. FRYE. Specifically, I think the wage rate needs to be addressed first and foremost. If you are an employer participating in the H-2A program, you are at a competitive disadvantage because your wage rates are much higher. Not only your rates are much higher, you have to provide housing. You have to provide transportation. All of which is perfectly fine.

No one participating in the program, I think, has a problem with doing any of that. But what we would like to see is a more level playing field where all workers are paid wages that are similar.

Mr. JOHNSON. When you are in need of employment, how do you advertise for employment? I mean, locally, domestically. What is the process you do to try to find local workers?

Ms. FRYE. So by law, participating in the H-2A program what we have to do is we actually have to advertise for the jobs that we anticipate having in the upcoming season. So we put ads in the newspaper. We run them for a certain period of time. I think we even do some—potentially some online advertising. We provide a notice to the number of jobs that we have and what types of jobs they are so that they can be filled by domestic workers.

But as I stated before, we farm in very rural areas, and we simply don't have the population to support the high number of jobs that we need for such short seasonal time windows.

And I will say—and I do feel like I need to add—that the H-2A program bringing in the temporary workers not only benefits the communities in which we bring them into, because the workers get paid a lot of money, and they spend a lot of money in these communities and local businesses, et cetera.

In addition to that, as we are able to—I mean, if you noticed in my opening testimony, we farm in seven States. It is actually well over seven States. We would be—every time we increase the number of acres that we grow, pack, ship, and sell direct to retail markets such as Kroger, Wal-Mart, Target, et cetera, we are creating domestic jobs that are at a much higher level. So if I am able to grow an extra 300 acres of produce that I can sell directly to Whole Foods, or Publix, or Meijer, whoever, then I need someone to manage that account with that retailer.

I need more purchase order clerks. I need more shipping and receiving managers. I need more forklift drivers. I need more farm managers. These are all domestic positions that I am able to create every time I bring in more workers. So I would say, to answer your question, the wage rate needs to be addressed. And, in addition to that, we need access to even more guestworkers.

Mr. JOHNSON. I appreciate that.

Mr. Wyss, similar question for you. Obviously, we are concerned—we want to reduce the burden on the farmers when there is a shortage of labor like this. And I wanted to ask you the same general question, specifically what do you think—I mean, the wage rate is obviously part of it. But are there other things, for example,

in modernizing the H-2A visa process, do you have any recommendations on how we can streamline the application process? Because I know it is a big burden.

Mr. WYSS. I think Ms. Frye covered it very well as to some of the major problems. But also to streamline the program with the application process, I mean, I think we could do a lot in the application process to make that more streamlined. And I think, me personally, the Department of Labor is who oversees this program. But they are also the program auditor. So you have the same agency who approves you is the same agency who audits you.

Moving the program over into the farm—USDA, would probably be very helpful because they have a better understanding of OnFarm. They run all the farm programs with us already. I think that would be a massive help.

Mr. JOHNSON. I have got sixteen seconds. But I will just pitch one more question, and see if you can answer real quick. I know you talked about the I-9 inspection and audit that you all went through. Any suggestions there on how that process might be improved, that could have helped in that situation? Flexibility in responding, for example. Would that help?

Mr. WYSS. Well, entry to the program. So after our ICE audit we had to enter the program overnight and you have to wait a hundred days to get a worker. We needed them the next day. So if they could shorten that process down to like what they do with H1B, H2B, in an attestation base, we could have received those workers when we needed them and not waited a hundred days.

Mr. JOHNSON. Thank you all for your testimony. I yield back.

Mr. BIGGS. Gentleman's time has expired.

I will recognize the ranking member of the Judiciary Committee, Mr. Conyers.

Mr. CONYERS. Thank you very much. I apologize for missing the original testimony. But I do have a couple of questions here. Ms. Frye—wait a minute. Or Mr. Kashkooli, in Ms. Frye's testimony I was told that she outlines a proposal for allowing undocumented farm workers to become H-2A workers. Would the United Farm Workers support such a proposal in your view?

Mr. KASHKOOLI. We wouldn't support that proposal. I think what makes more sense is Congressman Gutiérrez's proposal that takes the current workforce who are professional farm workers and allows them to get a blue card or temporary legal status. That actually solves the problem that I heard more directly, the issue that I have heard Ms. Frye, in particular, address, which is they are in areas where there are not a large number of workers, and so therefore it is hard to attract workers.

The blue card giving professional farm workers legal status, and also an incentive to stay in agriculture would allow the market to work and allow it to work more efficiently by taking a million or so farm workers who would be newly acquired with blue cards and have them have an incentive to match themselves to a more willing employer. I think that is the more logical step. And I also note that it has a lot more support in Congress than the other proposal.

Mr. CONYERS. Thank you. Now, would allowing existing farm workers to obtain temporary immigration status satisfy your interest in addressing the current workforce?

Mr. KASHKOOL. Yeah. It would. I think that is what the agricultural worker program does, program act does, H.R. 2690.

Mr. CONYERS. Finally, while the majority of the agricultural workforce is undocumented and in need of an earned legalization program, there is still several hundred thousand legal immigrants and citizens who still seek employment in agriculture. With the necessity for jobs in the forefront of the political debate, we need to assure these individuals are not harmed under this new policy. How would these legal immigrants and citizens be affected by a new temporary worker program like the ones that other witnesses are proposing?

Mr. KASHKOOL. I can't speak to what other witnesses speak. But I will speak to the one that Chairman Goodlatte suggested. Eliminating the 50 percent rule means that U.S. citizens and legal permanent residents who want to work in agriculture wouldn't be able to. So we think that is a mistake.

Reducing wages below the average wage that employers themselves have submitted to the United States Government, that is a mistake. By definition, that will reduce the wages of all farm workers.

Removing free housing, that is a mistake. As Ms. Frye eloquently suggested, bringing people in for short seasons of work, if you don't provide free housing, where is it that this group of people miraculously are going to show up that no one else, U.S. citizens, are willing to do the job? Where is it that they are going to live. We know from history where they are going to live. They are going to live on riverbeds, on school parks. That is where folks live. And, unfortunately, in some cases, that is where people are living now without homes.

So making those types of changes make no sense. Now, doing something online as opposed to forced reams of paperwork, that makes sense. Having a transparent so that every employer knows which labor contractor has been found guilty of the types of things that were found in Arizona where people were housing in schoolbuses.

Right now, if Ms. Frye or Mr. Wyss wants to look up a new labor contractor, they don't know. There is no good way for them to find out if they have been found guilty of housing people in schoolbuses or cheating people on wages. So that would be a simple thing to honor employers who have done the right thing and to make sure U.S. workers and new workers come into the United States. And, if I can, I just want to address Congressman King's comment. He said that if you had one of your sons not doing work. Let's do the other one. If one out of 150 people in the United States is making sure to feed everybody—and our industry is the only industry in the United States that impacts everybody. Everyone eats. If one out of 150 people had worked for 15 to 20 years making sure all of us fed, doesn't it make sense, by Congressman King's own logic, that that would be the person you would want to reward, not the one you want to punish?

Mr. BIGGS. Thank you.

Mr. CONYERS. Thank you very much.

Mr. BIGGS. The gentleman's time has expired. Thank you, Mr. Conyers.

And I recognize myself for 5 minutes to ask a few questions. And I will start with you, Mr. Kashkooli. What is your organization's estimate of the number of currently unauthorized farm workers in the U.S.?

Mr. KASHKOOL. As I mentioned with Ms. Lofgen, those numbers are a little challenging. But what we would guess is there is roughly 2 million farm workers, professional farm workers, in the United States. Government statistics suggest that about half don't have legal status. So that would mean that the number is about a million people.

Mr. BIGGS. And, Mr. Kashkooli, you have called for increasing farm workers protections. Can you tell me what provisions are included in the Agricultural Worker Program Act that might be addressing those issues that you have identified?

Mr. KASHKOOL. Well, the biggest thing that the Agricultural Worker Program Act does is it allows professional farm workers to earn legal status. That one step, taking people out of shadows means that that group of people can get a driver's license and move more freely, move to jobs in other parts of the country. There aren't any other protections beyond that other than earning that legal status. But that is a big one. Because it means you are not worried constantly about being deported from the country. And it means that you can move freely and seek employers that are treating you correctly.

So you are not undermining U.S. workers and legal permanent residents who are more prepared to speak out. So that is the only protection that the Agricultural Worker Program Act, but it is a very, very, very important one.

Mr. BIGGS. The next question is for either or both of you, Ms. Frye, Mr. Wyss. Chalmers Carr has said that many farmers prefer to employ illegals because it is cheaper and they remain off Federal and legal radars. Do you get the sense that the government is at least providing some kind of perverse incentives for hiring illegal immigrants rather than use the H-2A program?

Ms. FRYE. Yes. Yes. The Department of Labor is like family. They stop by all the time.

Mr. BIGGS. Elaborate, will you, please, both?

Ms. FRYE. It seems like every time we turn around. I mean, go back maybe 3, 4 years ago, on July 23rd, we were visited by Homeland Security, the Department of Labor, the—let's see here, OSHA, the FDA, and the Migratory Farm Workers legal counsel in 1 day, five agencies. Five agencies in 1 day. Oh, it was State and Federal DOL as well.

So, yeah, I think that when you do participate in a program such as the H-2A program you have a big target on your back. And, you know, folks come by and, you know, they check on you early in the season, which is great because—you know, obviously, these—you are bringing in foreign workers. That is completely understandable. And they want to make sure housing is inspected and everything is good. That is great. But then they don't stop coming. And it creates a challenge.

And I think that employers of the H-2A program have actually been targets for a lot of audits. And that is unfortunate. Because, I tell you what, the folks who are using the H-2A program in this

country are American farmers who love their country, want to uphold the law, treat their workers fairly, pay them an incredible wage rate, and really just want to grow fruits and vegetables in a lawful way. The idea that those growers have been targeted—which they have—and I can speak to my own experiences—versus who you, Mr. Kashkooli, were talking about earlier, contract laborers—this not farmers.

You weren't talking about a farmer earlier making people live in schoolbuses. Okay? You are talking about contract laborers if I understood you correctly. So this could be anyone who has a group of workers working under them, paying them whatever they want to pay. The workers have no direct relationship whatsoever with the farmer whose fruits and vegetables they are actually harvesting.

You know, so I think those are the folks that probably need to be getting looked at a little bit harder versus people who are participating, growers who are participating in the H-2A program, who are trying to abide by the law and treat workers fairly, and pay a loaded wage rate between 15 and \$16 an hour. That is just my observation.

Mr. BIGGS. Well, thank you. Thank you. And I am glad I asked you to elaborate as well.

Mr. Wyss, she elaborated for you as well. So you don't need to at this point.

Mr. WYSS. She is good. I would have said the same thing.

Mr. BIGGS. And my time is now expired as well.

And as we get ready to close this hearing, thank you. I thank all the participants who have come and testified today, and appreciate your testimony, members of the committee as well. And, with that, we are adjourned.

Mr. WYSS. Thank you so much.

[Whereupon, at 3:56 p.m., the subcommittee was adjourned.]